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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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DEC 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

To: The Commission

COMMENTS OF COX COMMUNICATIONS, INC.

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December 19, 1996

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SUMMARY

Cox supports the basic thrust of the *Recommended Decision* in this proceeding. In implementing the *Recommended Decision*, the Commission should strive to achieve certain basic goals: maintaining universal service; ensuring that subsidy flows are explicit; minimizing the size of the universal service fund; ensuring wide eligibility for carriers to obtain universal service funding; and adopting a system of portable subsidies. These comments address several steps the Commission should take to achieve these goals.

The Commission should adopt rules that minimize the subsidies needed for core services. First, the Commission should affirm the recommendation that second telephone lines, both business and residential, are not eligible for universal service support because there is no basis for subsidizing these lines. Second, the Commission should adopt specific mechanisms to review and reduce the amount of universal service support as competition drives down prices and costs.

The Commission can maximize carrier eligibility for universal service support by adopting the smallest reasonable minimum service areas. Small service areas are important because facilities-based competition will develop in "islands" that will grow gradually. The Commission should review the recommendation to use the study area as the minimum service area for rural LECs because rural LEC study areas often are non-contiguous. The Commission also can increase eligibility for universal service funds by allowing carriers to cooperate to meet minimum service area requirements in areas that are larger than their individual service areas.

The Commission should focus its rules for subsidies for schools, libraries and rural health care providers on maximizing benefits to students and consumers, not to service providers. The Commission should adopt rules that make all potential providers of service eligible for subsidies and that limit service areas for school, library and health care contracts to the extent possible. Subsidies should be limited to new contracts that are subject to the bidding procedure outlined in the *Recommended Decision*. To maximize the flexibility of schools, libraries and health care providers to obtain the best services, “all or nothing” bids on contracts for core and advanced services should be prohibited. Finally, the Commission should adopt “bandwidth incentives” that encourage schools, libraries and rural health care providers to purchase high bandwidth services that will permit effective use of the Internet and other services as they evolve into the future.

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To: The Commission

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc., by its attorneys, hereby submits its comments in response to the *Recommended Decision* in the above-referenced proceeding.^{1/} As described below, Cox supports the basic thrust of the *Recommended Decision*. These comments suggest specific steps the Commission and the States should take to implement the principles enunciated in the *Recommended Decision*.

I. Introduction

Cox has a particular interest in this proceeding because of its commitment to provide facilities-based telecommunications wireline and wireless services using its cable plant. Cox has implemented an aggressive program to upgrade its cable plant and provide new telecommunications and digital data services. Cox has deployed fiber to the highest percentage of its customers in the cable industry. Cox expects to be able to provide

^{1/} Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45, rel. Nov. 8, 1996 (the "*Recommended Decision*"). The Commission requested comment on the *Recommended Decision* in a public notice released November 18, 1996, and extended the time for comments through December 19, 1996 in an order released on December 11, 1996. See *Public Notice*, "Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision," DA 96-1891 (rel. Nov. 18, 1996); *Order*, CC Dkt. No. 96-45 (rel. Dec. 11, 1996).

telecommunications services to 2.0 million homes by the end of 1997, and to 3.3 million homes by the end of 1998. Cox currently is certificated to provide telecommunications services in California, Louisiana, Nebraska and Virginia, and has applications for certification pending in Arizona and Oklahoma. In addition, Cox is one of the leaders in efforts to bring advanced services to its cable customers through its ownership interest in @Home, a high-speed data service that will be offered over Cox's cable systems, among others.^{2/} In furtherance of these efforts, Cox recently announced major agreements to purchase cable modems as part of its roll-out of Internet access services to its cable customers, including elementary and secondary schools.^{3/} Cox also is the pioneer's preference licensee for broadband PCS in the Los Angeles MTA and a partner in Sprint PCS, which has been licensed for PCS markets serving 180 million Americans.

Cox supports the basic universal service principles enunciated in the *Recommended Decision* and the 1996 Act.^{4/} First, Cox supports efforts to ensure that universal service is maintained. Second, it is critical to adopt rules that make universal service subsidiaries explicit. Third, Cox supports efforts to minimize the size of the universal service fund through sustained and successful facilities-based competition, which will put downward pressure on the need for subsidies. Fourth, Cox supports broad carrier eligibility for subsidies, which will ensure that subsidized consumers benefit from competition and will

^{2/} Cox has now launched this service in its Mission Viejo, California system.

^{3/} R. Tedesco, "Cable Commits to Digital, Online Future," BROADCASTING & CABLE, Dec. 16, 1996 at 10.

^{4/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

limit the incentives of individual eligible carriers to exaggerate their subsidy requirements.

Fifth, Cox supports the portability of subsidies, so that customers (and subsidies) are not linked inextricably to their current carriers. Applying these principles to high cost areas, to low income customers and to services for schools, libraries and rural health care institutions will benefit the public interest by lowering the cost of universal service subsidies while increasing consumer choice. These comments focus on several specific steps the Commission should take to achieve those goals.

II. As a Policy Matter, the Commission Should Adopt Rules that Minimize the Total Amount of Universal Service Subsidies for Traditionally Supported Services.

The Commission's rules must minimize the total amount of the universal service subsidy pool. It is important to ensure that unnecessary subsidies do not become a permanent fixture that impedes competition.

The subsidy mechanisms adopted by the Commission and by the States must be viewed in light of the basic policy objectives of the 1996 Act. The 1996 Act was intended "to provide for a pro-competitive, de-regulatory national policy framework" that would "open[] all telecommunications markets to competition."^{5/} While the 1996 Act also mandated the adoption of universal service subsidies, subsidy mechanisms are inherently regulatory and do not directly promote competition. Indeed, because subsidy mechanisms often shift revenues from one competitor to another, they tend to limit the marketplace advantages of

^{5/} S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (the "Conference Report").

more efficient competitors to the detriment of competition and consumers.^{6/} For this reason, subsidies for core services should be treated as a transition mechanism that should become less and less important as competition emerges. Cox suggests two steps the Commission can take to limit the initial scope of subsidies for core services and to reduce them over time.^{7/}

First, the Commission should affirm the recommendation that second residential or business telephone lines should not be eligible for universal service subsidies.^{8/} While second lines might technically provide core services, in practice no second line serves universal service goals. No second line is necessary to ensure access to the telephone network because, by definition, there already is at least one line in the household or business served by the second line. Moreover, second lines should not be subsidized because they are a significant source of profits to telephone companies. It costs very little to provision a second line because conventional loops have the capacity to provide two lines from the day they are put into place, yet telephone companies charge the same amount for a second line as they do for the first one. Indeed, recent profit reports show that the revenues from second lines have

^{6/} This is particularly the case for "high cost" subsidies, which inevitably transfer revenues from more efficient entities to less efficient entities.

^{7/} These comments principally apply to subsidies for high cost areas or, to the extent such subsidies exist, for residential or single line business subscribers. They do not apply to programs such as Lifeline and Link-Up and the support mechanisms for schools, libraries and rural health care institutions.

^{8/} *Recommended Decision* at ¶ 89.

begun to have a significant positive impact on major telephone companies.^{9/} There is no basis for throwing public money at services that already are highly profitable.

Second, the Commission should adopt specific mechanisms for periodic review and reduction of universal service support as competition drives the prices for core services lower. Given the advent of competition, it is likely that the current required subsidy level is the highest it will ever be. As competition emerges, costs, profits margins and prices will be driven lower. Moreover, improvements in technology will continue to drive costs down, with or without competition. The universal service fund must recognize the reduction in costs that will come with competition and new technologies and must be adjusted accordingly.

III. The Commission Should Take Steps to Maximize the Number of Carriers Eligible for Subsidies for Core Services.

The *Recommended Decision* correctly recognizes that it is appropriate to maximize the number of carriers eligible for universal service subsidies for core services.^{10/} Adopting rules that are technology neutral and that give many carriers the opportunity to provide universal service will benefit consumers and help achieve the Congressional goal of encouraging competition. It is critical for the Commission to maintain the Joint Board's focus on competitively neutral rules that do not disadvantage any entities providing

^{9/} See, e.g., "Pacific Telesis Continues Earnings Growth in Third Quarter," Pacific Telesis Press Release, Oct. 17, 1996 (additional lines increased 105 percent over previous year).

^{10/} *Recommended Decision* at ¶¶ 155-158.

telecommunications services. Maximizing eligibility is an important way to maintain competitive neutrality.

The Commission should take two additional steps to maximize eligibility for universal service subsidies. First, it should adopt minimum service areas that are as small as reasonably possible. Second, it should permit telecommunications carriers to work cooperatively to meet any minimum service area requirement.

Small service areas are important because they allow new entrants to more easily become eligible for universal service subsidies. As was the case when telephone service first became available, competitive telephone service (and certainly facilities-based competition) will start with islands of service that will grow over time.^{11/} If new competitors are to be eligible for universal service subsidies, the minimum service areas must be as small as reasonably possible.

At the same time, smaller service areas also will increase the likelihood of competition in all geographic markets. If a carrier must cover the entire state of Nebraska to be eligible for a subsidy, few, if any, companies will even make the attempt to provide universal service. If, on the other hand, it is possible to obtain a subsidy by providing service to Lincoln, Omaha or Grand Island, then many more companies (including the cable operators serving those cities) will have an incentive to construct facilities and qualify for subsidies. The competition that will result not only will benefit consumers, but is likely to reduce the need for universal service subsidies in the long run as costs and prices are driven down.

^{11/} This also is the way that facilities-based long distance competition grew.

For similar reasons, the Commission should modify the Joint Board's recommendation to use study areas as the service areas for rural LECs. While the *Recommended Decision* acknowledges the advantages of using study areas as the universal service service areas for rural LECs, it does not recognize a key flaw: Many rural LEC study areas are non-contiguous. Consequently, using the entire study area as the service area for rural LECs could force competitors to serve widely disparate areas within a single state before becoming eligible for universal service subsidies.

For instance, the Commission recently approved modified study areas for four rural telephone companies serving parts of Nebraska.^{12/} As the maps attached to the application for these new study areas show, three of the four companies have noncontiguous study areas.^{13/} In some cases, there are gaps of 70 to 80 miles between parts of a company's study area.

The Nebraska example is one of many across the country. It is likely, in fact, that the number of non-contiguous study areas has increased over the past decade as the smallest telephone companies have been purchased by somewhat larger companies and as companies such as U S WEST have chosen to divest some of their rural exchanges. Requiring new competitors to serve all of such non-contiguous study areas before they are eligible for a

^{12/} Petitions for Waivers Filed by Arapahoe Telephone Company, Great Plains Communications, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, and U S WEST Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, *Memorandum Opinion and Order* (Accounting and Audits Div., Com. Carr. Bur.), rel. Nov. 15, 1996 (the "*Nebraska Waiver Order*").

^{13/} Copies of the maps showing the non-contiguous study areas are attached as Exhibit 1.

subsidy will, in practice, greatly limit the eligibility of new entrants for subsidies that they otherwise would be entitled to receive.

One solution to this problem is to require the new entrant to serve all of any contiguous service area. This approach will continue to protect rural carriers from “cream-skimming,” but will give competitors a fair chance to obtain a subsidy. This approach also is consistent with the Commission’s current standards for modifying study areas, which require carriers to demonstrate that modifications will not increase universal service costs.^{14/}

The Commission also can maximize eligibility for universal service funds by permitting competitive carriers to provide service cooperatively to defined service areas. This approach is necessary because, regardless of the size of the areas the Commission defines, some new entrants may not be able to provide facilities-based service to the entire area. For example, cable franchises in larger cities often are split among two or more cable operators. If the defined service area is the entire city, it will be difficult for any individual cable operator to qualify for universal service funds. If, however, the cable operators serving the city are permitted to provide universal service cooperatively, then they could be eligible as a group for universal service funding. This pattern could repeat itself across the country, not just in large cities but also in suburban and rural areas where several cable operators provide service in a given county. Permitting new entrants to cooperate also recognizes the likely growth pattern for competition, described above, by linking the “islands” of service that will be provided by otherwise competing carriers to provide universal service coverage.

^{14/} See *Nebraska Waiver Order* at ¶ 5.

IV. The Commission Should Adopt Rules Governing Subsidies for Schools, Libraries and Rural Health Care Providers that Maximize the Benefits of the Subsidy Funds to Students and Consumers.

When considering rules for subsidies to schools, libraries and rural health care providers, the Commission should maintain its focus on benefiting students and consumers, not service providers. Such benefits are the reason that Congress adopted Section 254(h). As the Conference Report explains, this provision “will help open new worlds of knowledge, learning and education to all Americans — rich and poor, rural and urban.”^{15/} To ensure that those benefits are delivered to schools, libraries and rural health care providers, the Commission should: maximize the number of entities eligible for subsidies; limit the subsidies to new contracts; design the bidding rules to maximize the flexibility of recipients to obtain the best, most cost-effective arrangements possible; and adopt incentives for eligible entities to obtain advanced infrastructure that will accommodate future growth.

A. The Commission Should Maximize the Number of Service Providers Eligible for Subsidies.

As with core services, the maximum consumer benefits from school, library and health care subsidies will be produced by maximizing the number of service providers eligible for those subsidies. The Commission can achieve this goal by adopting rules that permit any entity providing a covered service to obtain a subsidy and by limiting the size of the geographic area that an eligible entity must serve.

^{15/} Conference Report at 132.

The *Recommended Decision* takes an important initial step by determining that Section 254(h) does not limit eligibility for school, library and health subsidies to telecommunications carriers.^{16/} While some services subject to the subsidy are telecommunications services, many others are not. For instance, Internet access does not fall within the definition of telecommunications services, but is within the definition of “advanced services” under Section 254(h)(2). Limiting eligibility for subsidies for these services to telecommunications carriers would, consequently, unreasonably limit the ability of schools, libraries and health care providers to obtain the services they determine they need from the best, most cost-effective providers. Moreover, this recommendation is consistent with the language of Section 254, which does not limit eligibility for subsidies to telecommunications carriers and which imposes funding obligations on telecommunications carriers, not on non-carriers.^{17/}

There is no inconsistency between the requirements of Section 254(h)(2) and a mechanism that depends on telecommunications carriers for funding. As a threshold matter, limiting the funding obligation to telecommunications carriers does not create a comparative advantage in providing advanced services because telecommunications carriers’ payments to the universal service fund will be based on telecommunications revenues, not on revenues for non-telecommunications services such as infrastructure construction or Internet access. Thus, provision of advanced services, by either a telecommunications carrier or by a non-carrier,

^{16/} *Recommended Decision* at ¶ 544.

^{17/} Compare 47 U.S.C. § 254(h)(1)(B) with 47 U.S.C. § 254(h)(2) (eligibility for funding). See 47 U.S.C. § 254(b)(4) (imposing funding obligation on telecommunications carriers).

will not create any obligation to make universal service payments, leaving both carriers and non-carriers on an equal footing.

Another way to ensure wide eligibility for universal service subsidies is for the Commission to limit the geographic scope of contracts under Section 254(h). As described above, there are significant competitive and consumer benefits to adopting the smallest reasonable service areas for universal service, and those benefits also will accrue in the context of services to schools, libraries and rural health care providers.^{18/} Overly-large geographic scopes could effectively limit Section 254(h) contracts to a single bidder — the incumbent LEC — while smaller geographic scopes will increase the number of potential bidders. Moreover, there are likely to be significant benefits for schools, libraries and health care providers to encouraging CLECs and cable operators to provide services under Section 254(h). These benefits include the ability to obtain greater bandwidth, given the generally higher capacities of cable and CLEC plant, and to secure new and better services than those available from incumbent LECs.

The Commission therefore should adopt specific limits on the geographic scope of contracts under Section 254(h). An appropriate limit would be a school district (or the equivalent for libraries). School districts represent existing administrative subdivisions and, generally, are not so geographically extensive as to prevent smaller entities from providing service to them. In addition, most of the economies of scale that are likely to accrue in any contract will be at the school district level, rather than at some larger level of aggregation.

^{18/} See *supra* Part II.

B. The Bidding Rules Should Limit Eligibility for Subsidies to New Contracts and Should Maximize the Flexibility of Eligible Entities to Obtain the Best Service Arrangements Possible.

The Joint Board has recommended a bidding mechanism for Section 254(h) subsidies.^{19/} The Commission should adopt bidding rules that limit eligibility for subsidies to new contracts and maximize the ability of eligible entities to choose the service elements that best suit their needs.

First, the Commission should not permit Section 254(h) subsidies to be applied to existing arrangements for provision of service to schools, libraries and rural health care providers. There is no direct public benefit to applying subsidies to these arrangements. In fact, the most significant beneficiary of subsidies under existing contracts would be the incumbent monopoly LEC. That is not what Congress intended. The only way to enact the Congressional intent to encourage competition and the provision of all types of services to eligible entities is to require that any contract for which subsidies will be provided is put out for bid under the procedures proposed in the *Recommended Decision*. Moreover, subsidies are not necessary for existing arrangements: schools, libraries and health care institutions already are using these services without any subsidy. Thus, the Commission should make schools, libraries and rural health care providers ineligible for subsidies during the term of any existing contractual arrangement.

The bidding rules also should be designed to maximize the flexibility of schools, libraries and rural health care providers to obtain the best possible mix of services from the best providers of those services. To achieve this goal, the Commission should require

^{19/} *Recommended Decision* at ¶ 539.

separate bidding for core services, Internet access and infrastructure, and should not permit companies to submit “all or nothing” bids combining these service categories or providing an “all or nothing” bundled discount.

If the Commission does not require separate bidding for these categories of service, it runs the risk that incumbent LECs will submit all or nothing bids, while other entities will submit bids for services in only one or two of the service categories. This will leave the eligible entity with little choice but to accept the LEC bid, even if other providers offer better (or cheaper) infrastructure or Internet access. Forbidding bundled bids, on the other hand, will permit schools, libraries and rural health care providers to choose the best combination of services, whether that combination is offered by one provider or by choosing the bids of three different providers.

C. The Commission Should Adopt “Bandwidth Incentives” to Encourage Schools and Libraries to Obtain Advanced Infrastructure that Will Accommodate Future Growth.

The *Recommended Decision* proposes to vary the subsidies available to schools and libraries based on the cost of service and the income level of the area served by an individual school or library.^{20/} The Commission should add one additional criterion to the discounts and provide schools and libraries with incentives to obtain high bandwidth infrastructure and services. As shown below, encouraging schools and libraries to obtain high bandwidth services will significantly increase the benefits of the advanced services subsidies under Section 254(h)(2).

^{20/} *Recommended Decision* at ¶ 547.

It is apparent that the availability of high bandwidth is becoming increasingly important to users of advanced services. Many services, such as distance learning, require high bandwidth. Others, such as Internet access, are much more practical if high bandwidth is available. In the case of Internet access, the difference between a high bandwidth cable modem connection and a 28.8 kbps conventional modem could be the difference between downloading a web page in five seconds and downloading it in five minutes.^{21/} If a teacher can download a page in five seconds, the Internet is a real teaching tool; if it takes five minutes, it is likely that students will stop paying attention and, in any event, the amount of time wasted waiting for the download will make it impractical to use the Internet in all but exceptional circumstances. Moreover, the necessary bandwidth for services also continues to increase as the Internet becomes more graphic and as the volume of data and the computing power available to users become greater. If schools and libraries obtain infrastructure or "advanced" services that are based on low bandwidth designs, it is likely they will be left behind.

The Commission can forestall this possibility by adopting specific incentives for schools and libraries to obtain high bandwidth services and infrastructure. The simplest incentive, of course, is an additional discount, perhaps on a sliding scale that gives the greatest discount to the highest bandwidth services.^{22/} By giving schools and libraries a

^{21/} Services such as @Home, which caches frequently-accessed Internet documents, could increase the difference between high bandwidth and conventional services even further.

^{22/} For instance, there might be no additional discount for standard telephone lines, an additional discount of 5 percent for service with capacity equivalent to basic rate ISDN and an additional discount of 10 percent for service with capacity equivalent to a T-1 or greater.

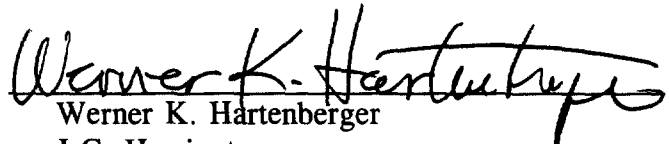
financial incentive to obtain additional bandwidth, the Commission can increase the likelihood that they will obtain truly advanced services that will serve students and other consumers for years to come.

V. Conclusion

For all these reasons, Cox Communications, Inc. urges the Commission to adopt rules in accordance with the proposals contained herein.

Respectfully submitted,

COX COMMUNICATIONS, INC.


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J.G. Harrington
Laura H. Phillips

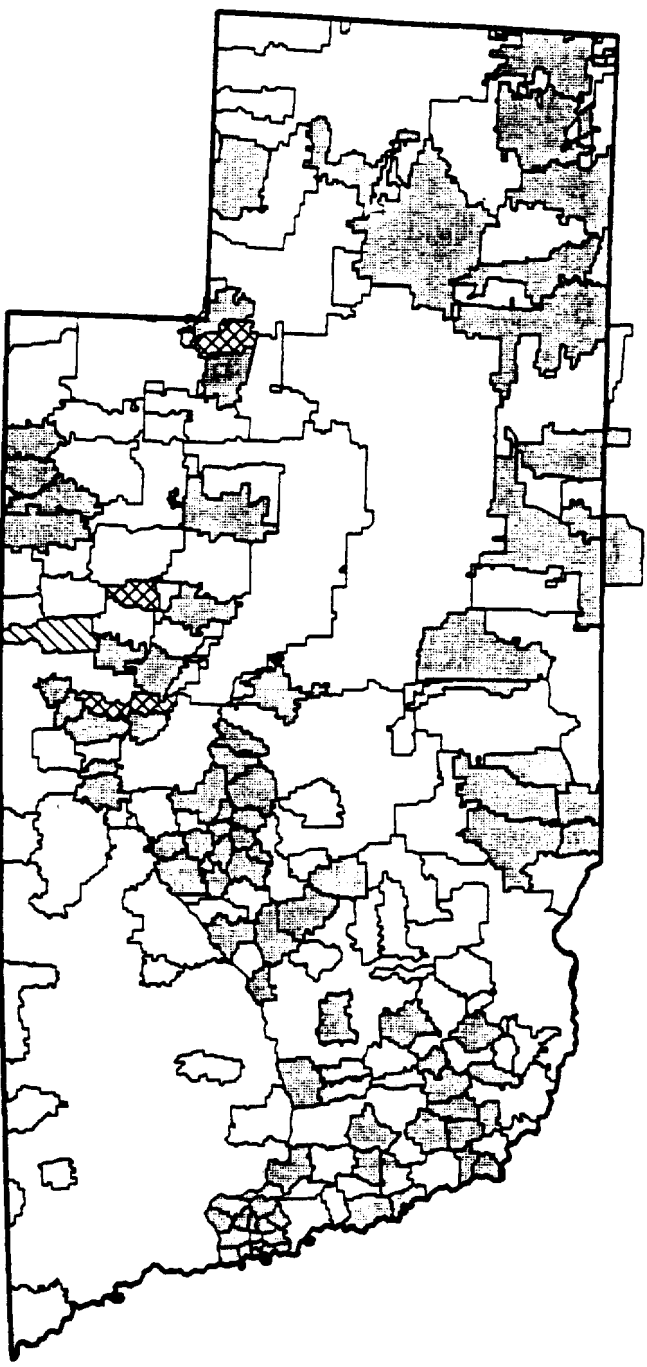
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December 19, 1996

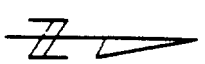
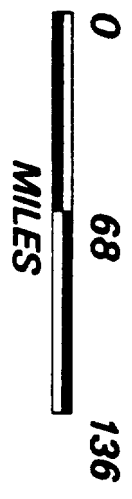
EXHIBIT 1
STUDY AREA MAPS

NEBRASKA U S WEST WIRE CENTERS AND PURCHASER ARAPAHOE TELEPHONE COMPANY

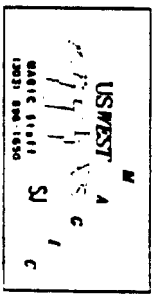


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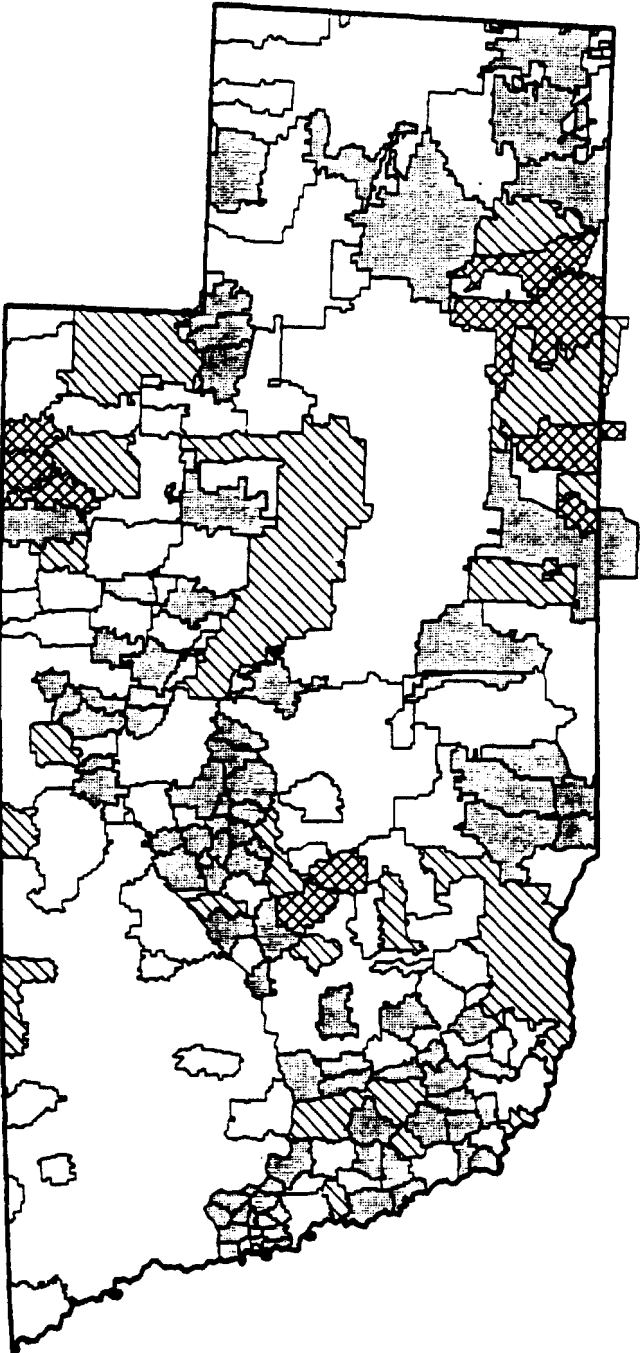
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CURRENT HOLDINGS
-  U S WEST
WIRE CENTER






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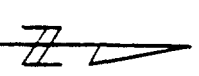
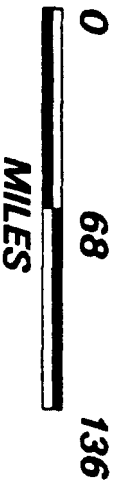


NEBRASKA U S WEST WIRE CENTERS AND PURCHASER GREAT PLAINS COMMUNICATIONS, INC

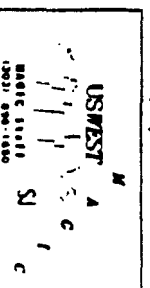


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-  U S WEST
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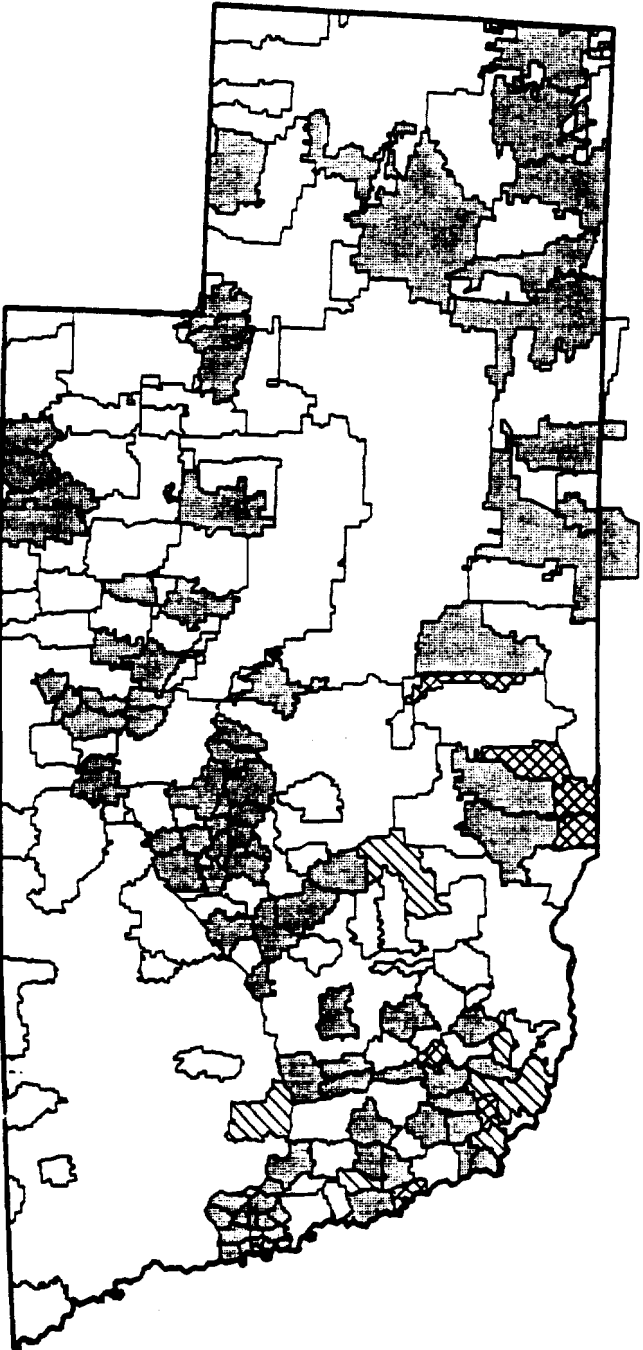


05/02/96



NEBRASKA U S WEST WIRE CENTERS AND PURCHASER

NORTHEAST NEBRASKA
TELEPHONE COMPANY



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WIRE CENTER
TO BE SOLD



PURCHASERS/AFFILIATES
CURRENT HOLDINGS



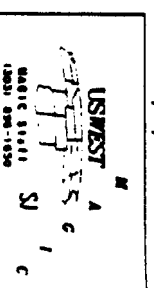
U S WEST
WIRE CENTER



MILES



05/02/96



CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, do hereby certify that on this 19th day of December, 1996, I caused copies of the foregoing "Comments" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

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